

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RHONDA CLARKE,

Plaintiff,

ANSWER

-against-

Index No.: 07cv3759

NATIONAL RAILROAD PASSENGER
CORP.,

Defendant.

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Defendant National Railroad Passenger Corporation, a/k/a Amtrak ("Amtrak"), by its attorneys, Landman Corsi Ballaine & Ford P.C., hereby answers the Complaint herein as follows:

1. Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "FIRST" of the Complaint.

2. Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "SECOND" of the Complaint except admits that Amtrak is a corporation organized pursuant to federal statute with a place of business in the State of New York, County of New York.

3. Defendant Amtrak admits the truth of each and every allegation contained in paragraph "THIRD" of the Complaint.

4. Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "FOURTH" of the Complaint.

5. Defendant Amtrak denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "FIFTH" of the Complaint.

6. Defendant Amtrak denies the truth of each and every allegation contained in paragraph "SIXTH" of the Complaint.

7. Defendant Amtrak denies the truth of each and every allegation contained in paragraph "SEVENTH" of the Complaint.

FIRST AFFIRMATIVE DEFENSE

8. Any injuries suffered by plaintiff were caused solely by her own negligence and not by any negligence of the defendant Amtrak.

SECOND AFFIRMATIVE DEFENSE

9. Any injuries suffered by plaintiff were caused, in part, by her own negligence, and any recovery by plaintiff must be diminished in proportion to that part of her injuries attributable to her own negligence.

THIRD AFFIRMATIVE DEFENSE

10. Any injuries suffered by plaintiff were not caused by a negligent act or omission of defendant Amtrak or any individual acting under its direction or control.

FOURTH AFFIRMATIVE DEFENSE

11. If plaintiff has sustained any damages in this matter, which defendant Amtrak denies, then defendant Amtrak's liability, if any, shall be limited in accordance with Article 16 of the New York Civil Practice Law and Rules.

FIFTH AFFIRMATIVE DEFENSE

12. Plaintiff failed to mitigate or otherwise act to lessen or reduce the damages alleged in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

13. This action should be dismissed pursuant to the doctrine of forum non conveniens.

SEVENTH AFFIRMATIVE DEFENSE

14. This action should be dismissed pursuant to the applicable statute of limitations.

WHEREFORE, defendant Amtrak demands judgment dismissing the Complaint herein, together with its costs and disbursements, and such other and further relief as this Court deems appropriate.

Dated: New York, New York
May 10, 2007

Respectfully submitted,

LANDMAN CORSI BALLAINE & FORD P.C.

By: 

Ronald E. Joseph (RJ9302)
Attorneys for Defendant Amtrak
120 Broadway, 27th Floor
New York, New York 10271-0079
(212) 238-4800

TO: Michael Flynn, Esq.
Law Offices of Michael Flynn, PLLC
Attorneys for Plaintiff
1205 Franklin Avenue
Garden City, N.Y. 11530
(516) 877-1234

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

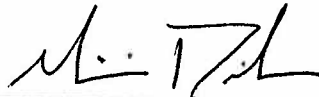
MIRIAM DEIKUN, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at QUEENS, NEW YORK.

That on the 14th day of May, 2007, deponent served the within
ANSWER

upon

Michael Flynn, Esq.
Law Offices of Michael Flynn, PLLC
Attorneys for Plaintiff
1205 Franklin Avenue
Garden City, N.Y. 11530
(516) 877-1234

attorneys in this action, at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.



Miriam Deikun

Sworn to before me this
14th day of May, 2007


Notary

JELENA BRIGIDA
Notary Public, State of New York
No. 01BR6156932
Qualified in Kings County
Commission Expires Dec. 4, 2010